IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7982 of 1992

For Approval and Signature:
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVSHANKER SHAW MILL - Petitioner(s)

Versus

ADDL COLLECTOR & COMPETENT AUTHORITY OFFICER (ULC) & 1 - Respondent(s)

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Appearance :
MR JR NANAVATI WITH MR SK PATEL for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged an order dated 25-03-1988 passed by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (here-in-after referred to as “the said Act”). The petitioner also challenges an order dated 31-07-1991 passed by the Urban land Tribunal by which the order of the Competent Authority dated 25-03-1988

came to be upheld.

2. The petitioner is a partnership firm. The petitioner held certain lands situated within the Urban agglomeration of Ahmedabad on the date when the said Act was introduced. The partnership firm was therefore, required to file necessary declaration under sub-section(1) of section (6) of the said Act. Such a declaration came to be filed for and on behalf of the partnership firm before the Competent Authority on 09-08-1976.

2.1 The petitioner had declared before the Competent Authority that the partnership firm held land bearing survey no. 260/1 of Odhav, Ahmedabad City, admeasuring 4032 sq. mtrs(4822 sq. yards). In the declaration, the petitioner did disclose that the said land contains a building for the purpose of saw-mill.

2.2 The form filled by the petitioner-firm was processed by the Competent Authority. After issuance of the draft statement as required under sub-section(3) of section 8 of the said Act and calling for objections from the petitioner, the Competent Authority passed the

impugned order on 25-03-1988. By the said order, it was declared that the partnership firm held a total area of 3032 sq. mtrs. of land as excess vacant land and he therefore, ordered that a statement under section 9 of the said Act be issued accordingly.

2.3 The petitioner preferred an appeal against the order passed by the Competent Authority. The appeal however, came to be rejected by the Urban Land Tribunal by its order dated 31-07-1991. The petitioner has therefore, preferred the present petition challenging the said orders.

3. Appearing for the petitioner, learned advocate Shri J.R. Nanavati with Shri S.K. Patel submitted that impugned orders are illegal and unlawful. He sought to challenge the orders mainly on the following grounds :

1) It was contended that at all stages the authorities have issued notice only to one of the partners of the petitioner-firm namely one Shri Vashrambhai Punjabhai Patel. It was contended that draft statement under sub-section(3) of section 8 of the said Act was served on the said Shri Vashrambhai Punjabhai Patel alone. That

subsequent notices were also issued only on the said partner and at no stage, other partners were served with any of the notices of the proceedings by the Competent Authority. It was additionally contended that notice under sub-section(5) of section 10 of the said Act for taking possession of the land in question was also issued only against one of the partners of the firm namely Shri Vashrambhai Punjabhai Patel. It was therefore, contended that for want of sufficient notices to the remaining partners, the proceedings suffered from material irregularity.

2) It was contended that there were four partners in the partnership firm. That each parter was entitled to hold one unit of land. It was therefore, contended that the authorities erred in allowing only one unit totally between four partners.

3) It was next contended that land in question was covered with construction. Such construction was with necessary approval by the Gram Panchayat. It was contended that the authorities therefore, erred in holding that land in question is a vacant land. It was urged that since the construction existed on the

appointed day, on the basis of law laid down by Hon'ble Supreme Court, such land cannot be held as vacant land.

Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567 to contend that any construction existing on the appointed day has to be taken into consideration for the purpose of ascertaining the extent of vacant land.

For the same purpose reliance is also placed on the decision of the Hon'ble Supreme Court in the case of State of Maharashtra and another v. B.E. Billimoria and others reported in (2003) 7 Supreme Court Cases 336, wherein the ratio laid down in the case of Smt. Meera Gupta v. State of West Bengal and others (Supra) has been reiterated.

4) It was contended that possession of the land in question was never taken over by the State Government and upon introduction of Urban Land (Ceiling and Regulation) Repeal Act, the proceedings should be treated to have abated. It was contended that though

the State Government has filed an affidavit contending that possession of the land in question was taken over before the crucial date of 31-03-1989, there is no material on record to establish that actual physical possession of the land in question was taken over by the Government. The learned advocate for the petitioner places reliance on several documents produced along with affidavit in rejoinder filed by the petitioner on 07-03-2000 to urge before the Court that well after the date on which according to the Government allegedly the possession of the land was taken over, the petitioner-firm continued its operations thereon.

Reliance in this regard was placed on the decision of the Division Bench of this Court in the case of Mavjibhai Parbatbhai Trapasia v. State of Gujarat passed in Letters Patent Appeal No. 498 & 699 of 1995 dated 04-10-2001.

4. On the other hand learned AGP Shri Siraj Gori submitted that the orders passed by the authorities are just and proper and call for no interference.

4.1 It was contended that the petitioner-firm is a

person as defined under section 2(i) of the said Act and is entitled to retain only one unit.

Reliance was placed on the decision of this Court in the case Minish K. Sheth and ors. v. State of Gujarat and ors. reported in 1985(1) GLR 202 in support of the said contention.

For the same purpose, reliance is also placed on the decision of this Court in the case of M/s. Central Engineering Works v. Competent Authority and Additional Collector, Rajkot & anr. reported in 1989(1)GLR 650.

4.2 It was further contended that notices were issued to the partner of the firm which would be a sufficient notice to the partnership firm. It was contended that no such objection was raised by any of the partners before the authorities. It was further submitted that partner of the firm Shri Vashrambhai Punjabhai Patel participated in the proceedings at all stages and represented the firm. It is therefore, not possible for the remaining partners to urge at this belated stage that they were not given sufficient

notice of the hearing of the proceedings or of the intention of the Government to take the possession of the land in question.

4.3 It was further urged that after following the procedure as required under the law, the possession of the land was taken over by the Government. On the basis of affidavit in reply filed by the State Government on 05-05-2004, learned AGP submitted that pursuant to the impugned orders, the State Government proceeded further as required under the provisions of section 9 and 10 of the said Act. It was pointed out that final statement under section 9 of the said Act was issued on 21-06-1988. Notification under sub-section(1) of section 10 of the said Act was issued on 08-09-1988 and was published in the official gazette on 13-10-1988. Notification under sub-section(3) of section 10 of the said Act was published in the official gazette on 28-09-1989 and notification under sub-section(5) of section 10 of the said Act was issued on 27-10-1989. It was further submitted that actual possession of the land in question was taken in presence of Panch witnesses on 13-2-1992. A panchnama in this regard was also drawn which is also produced with the affidavit.

He pointed out that sketch of the land of which possession has been taken was also drawn.

4.4 He therefore, submitted that the possession of the land in question having been indisputably taken over by the Government, the proceedings cannot be ordered to be abated by virtue of introduction of the Repeal Act. He submitted that no dispute regarding this factual aspects has been raised by the petitioner.

5. In addition to hearing the learned advocates at length, I have also perused the original files of the department and also permitted the learned advocates to peruse the same.

6. Having considered the rival submissions, it would appear that the petitioner-firm had filed a declaration as required under sub-section(1) of section 6 of the said Act. Such a declaration was signed by its partner Shri Vashrambhai Punjabhai Patel. In fact, Shri Vashrambhai Punjabhai Patel had filed the said declaration for and on behalf of the partnership firm. This is clearly borne out from the perusal of the original declaration filed before the Competent

Authority. Subsequently, also said Shri Vashrambhai Punjabhai Patel had participated before the Competent Authority while the said form was being processed. At all stages, notices were issued on the petitioner-partnership firm through its partner Shri Vashrambhai Punjabhai Patel who accepted such notices and remained present before the Competent Authority on several occasions. In fact said Shri Vashrambhai Punjabhai Patel also engaged advocates to represent the partnership firm before the Competent Authority. His advocate also remained present before the Competent Authority and applied for time on several occasions. It would thus, appear that said Shri Vashrambhai Punjabhai Patel was representing the partnership firm before the Competent Authority. At no stage any other partner came forward and suggested that Shri Vashrambhai Punjabhai Patel did not have the authority to represent the partnership firm. At the outset, as noted, declaration was filed by Shri Vashrambhai Punjabhai Patel for and on behalf of the partnership firm. He received all the notices on behalf of the partnership-firm and participated in the proceedings before the Competent Authority.

Section 24 of the Indian Partnership Act provides that notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm. Section 24 of the Indian Partnership Act reads as follows :

> “24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of the partner.”

It can thus be seen that Shri Vashrambhai Punjabhai Patel having represented the partnership firm before the Competent Authority at all stages, the partnership-firm cannot contend now before this Court that notices of the proceedings ought to have served on all the remaining partners also. In any case by virtue of provisions contained in section 24 of the Indian Partnership Act, such notices to the partner is sufficient notice to the partnership-firm itself. By his conduct Shri Vashrambhai Punjabhai Patel had represented before the authorities that he is authorised to represent the partnership firm in the said proceedings. No other partner raised any objection to Shri Vashrambhai Punjabhai Patel representing the firm before the authorities. The

question of serving the remaining partners, draft statement under sub-section(3)of section 8 of the said Act, or final statement under section 9 of the said Act or even the notice of taking possession under sub-section(5) of section 10 of the said Act does not arise. Even as per the provisions contained under sub-section (4) of section 6 of the said Act, declaration required under sub-section(1) of section 6 of the said Act could be filed by any partner of a firm. As noted Shri Vashrambhai Punjabhai Patel filed such a declaration for and on behalf of the firm and represented the firm all through out in the proceedings before the Competent Authority as well as before the Urban Land Tribunal. The remaining partners acquiesced in the same. To reiterate, Shri Vashrambhai Punjabhai Patel had sufficiently represented the partnership firm before the authority at all stages and remaining partners were not entitled to insist that separate notice be served on such partners.

7.With respect to the partners of the firm being entitled to retain one unit each, the provisions contained in the said Act need to be noted.

Section 2(i) of the said Act defines a person to include an individual, a family, a firm, a company or an association or body of individuals, whether incorporated or not. Section 2(i) of the said Act reads as follows :

> "(i)"person" includes an individual, a family, a firm, a company or an association or body of individuals, whether incorporated or not."

Section 3 of the said Act provides that on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies.

Section 4 of the said Act pertains to ceiling limit. Sub-section(1) of section 4 of the said Act prescribes different ceiling limits for different urban agglomeration falling within different categories specified in Sch.I of the said Act.

Sub-section(1) of section 6 of the said Act requires every person holding vacant land in excess of the ceiling limit at the commencement of this Act, to

make a declaration as prescribed therein. Proviso to sub-section(1) of section 6 of the said Act provides that such declaration will be filed by every person holding vacant land in excess of ceiling limit on or after the 17th day of February, 1975 in relation to any State to which the Act applies in the first instance.

7.1 It can thus be seen that on and from the commencement of the said Act, no person is entitled to hold any vacant land in excess of the ceiling limit. Any person holding the vacant land in excess of ceiling limit on the commencement of the said Act and when the Act applies to a State in the first instance, when such land is held by any person after the 17th day of February, 1975, such person is required to make a declaration under sub-section(1) of section 6 of the said Act. The ceiling limit is prescribed under sub-section(1) of section 4 of the said Act. The term “person” is defined under section 2(i) of the said Act which includes inter-alia a firm. Thus, a partnership firm as a person is entitled to hold the land only upto the ceiling limit from and on the commencement of the said Act. If the partnership firm holds any land in excess of ceiling limit, it has to make a declaration

under sub-section(1) of section 6 of the said Act. Thus, a ceiling limit attaches to the partnership firm and not to its partner in so far as holding of the partnership firm is concerned. We are not concerned with the situation where individual partner has made a declaration of his land holding in addition to the land held by the partnership firm of which he may be a partner. In so far as the present case is concerned, the only question is whether the partnership firm can insist that each partner is entitled to hold the land upto one unit of ceiling limit. As noted earlier, the ceiling limit attaches to the partnership as a person and as per section 3 of the said Act, a person which includes a partnership is not entitled to hold any land in excess of ceiling limit from and on the commencement of the said Act. Such ceiling limit has been laid down under sub-section(1) of section 4 of the said Act.

8. In the view that I have taken, I am fortified by the decision of this Court in the case of Minish K. Sheth and ors. v. State of Gujarat and ors. (Supra), wherein the learned Judge negatived such a contention. Similar was also the view of the Learned Single Judge in the case of M/s. Central Engineering Works v. Competent

Authority and Additional Collector, Rajkot & anr(Supra).

9.With respect to the question of the existence of the construction on the land in question, two aspects of the matter need closer scrutiny. First of all, except for a declaration in the Form itself for the land containing building for saw-mill, there is no other material to establish its existence or the extent of such construction. It may also be noted that there was no material produced to establish that such construction was with prior approval from the Competent Authority. Upon perusal of the files in fact, I find that on several occasions Shri Vashrambhai Punjabhai Patel had sought time before the authority for production of such material. Such adjournments were granted. Subsequently, also his learned advocates prayed for time before the authorities for the very same purpose. Such adjournments were also granted by the Competent Authority. However, till last when the Competent Authority passed its final impugned order, no material was placed before the authority by the petitioner. In fact, the draft statement issued under sub-section(3) of section 8 of the said Act remained

unopposed. No objections were raised by the petitioner. It can thus be seen that the contention that the land in question contained construction thereon, has remained one in realm of mere assertion of the petitioner. Three important aspects of the construction were not established before the authority. Firstly, the existence of the construction was not proved beyond doubt. Secondly, the nature and extent of the construction was also not established. Thirdly, it was also not shown whether the construction was with proper permission. In that view of the matter, the petitioner cannot contend that the authority erred in not taking into account the question of land having construction thereon.

The learned advocate Shri Nanavati strenuously urged before me that any kind of construction existing on the appointed day or any construction which has commenced on the appointed day would ensure that the land is not a vacant land and the provisions of the said Act consequently would not apply. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others (Supra).

Quite apart from the fact that extent and nature of the construction was never established before the authority, I am unable to accept the above contention of the petitioner also. In the decision of Smt. Meera Gupta v. State of West Bengal and others (Supra), the Hon'ble Supreme Court observed that there are three categories of lands which are not included in vacant land. Following observations of the Hon'ble Supreme Court in this regard be noted :

> "To begin with "vacant land" as per the definition given in clause(q) of Section 2 means land as such, not being land mainly used for the purpose of agriculture, but situated in an urban agglomeration. "Vacant Land", however, does not include, as per the definition, land of three categories. The first category is land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated. But this is a category with which we are not concerned in the instant case. Johnson's case (AIR 1983 SC 1303)(supra) is of this category. The second category is of land occupied by any building in an area, where there are building regulations, which has been constructed upon, or is under construction on the appointed day, with the approval of the appropriate authority, and the land appurtenant to such building. This means that if the building stood constructed on the land prior to January 28, 1976, the land occupied under the building is not vacant land. It also covers the land on which any building was in the process of construction on January 28,1976 with the approval of the appropriate authority. That too is not "vacant land". Additionally, the land appurtenant to these two kinds of buildings is also not "vacant land". The third category likewise conditioned is of land

> occupied by any building in an area where there are no building regulations, which has been constructed before January 28,1976 or is in the process of construction on such date, and the land appurtenant to these two kinds of building" (underlining supplied)

In the case of Smt. Meera Gupta v. State of West Bengal and others (Supra), Hon'ble Supreme Court thus, clearly provided that the second category is of land occupied by any building in a area where there are building regulations which has been constructed upon or is under construction on the appointed day with the approval of the appropriate authority, and the land appurtenant to such building. It was therefore, observed that this means that if the building stood constructed on the land prior to January 28, 1976, the land occupied under building is not vacant land. It also covers the land on which any building was in the process of construction on January 28,1976 with the approval of the appropriate authority.

In my view therefore, in the case of Smt. Meera Gupta v. State of West Bengal and others (Supra), Hon'ble Supreme Court did not lay down the proposition that no matter what the nature of construction, any construction found existing on the land on the

appointed day or where construction has commenced on the appointed day, land so covered under construction or under the process of construction and land appurtenant thereto should be excluded from the term “vacant land”. On the contrary Hon'ble Supreme Court specifically provided that the said category i.e. second category is of land occupied by any building in a area where there are building regulations, which has been constructed upon or is under construction on the appointed day with the approval of the appropriate authority. It was further elaborated that if the building stood constructed on the land prior to January 28, 1976, the land occupied under building is not vacant land and would also cover the land on which any building was in process of construction on January 28,1976, with the approval of the appropriate authority.

This is precisely what is envisaged in the term “vacant land” under section 2(q) of the said Act which reads as follows :

> “(q)vacant land” means land, not mainly used for the purpose of agriculture, in an urban agglomeration, but does not include,-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration(described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause”

I am therefore, unable to accept the contention of the learned advocate for the petitioner that to take any land out of purview of section 2(q) of the said Act as vacant land, all that is sufficient for the land holder is to establish before the authority that there was construction on the said land on the appointed day or that construction had commenced on the land in question on the appointed day. If such construction was without necessary approval from the authority where there are building regulations, in my view, such

construction cannot be taken into account for excluding the land from the purview of term vacant land under section 2(q) of the said Act.

In the present case in addition to not establishing before the authority that construction was with proper permission and approval, the existence and extent of the construction was also not established before the authority. On all counts, therefore, request of the petitioner to exclude the land covered by construction and land appurtenant thereto from consideration of vacant land cannot be accepted. I am aware about the observation made by the Tribunal in its impugned order that " The point at issue is not the existence of structure on the land question but its character." This however, is a passing remark and cannot be construed to suggest that factum of existence of construction was admitted.

10. The last question is with respect to taking over the possession of the land in question. As noted earlier in detail affidavit in reply, respondent-State Government has asserted that pursuant to the impugned orders, notifications under sub-section(1) and sub-section(3)

section 10 of the said Act were issued and published in official gazette. Notice under sub-section(5) of section 10 of the said Act was issued and served on the petitioner-firm through its partner. The possession of the land in question was taken over in presence of Panch witnesses. To this detail reply statement, the petitioner has not filed any rejoinder to dispute any of these factual averments. The respondents have also produced panchnama of having taken possession of the land in question. Along with Panchnama, a sketch showing the land of which possession was also taken was also prepared. Whether the possession was actually taken or not is the question of fact. No rejoinder is filed by the petitioner to the said detailed reply of the State Government though in earlier affidavit it was suggested that the petitioner continues to hold the possession of the land. I, however find that there is material on record to establish that possession of the land in question was taken over by the Government. After issuance of notification under sub-section(3) of section 10 of the said Act, land vested in the Government free from all encumbrances. The Government was therefore, entitled to take possession in accordance with law. After service of notices under

sub-section(5) of section 10 of the said Act, the possession was taken in presence of panch witnesses, veracity of which is not challenged before this Court.

10.1 It can thus be seen that State Government has established on record that after following legal formalities, the possession of the land was taken over by the Government before 31-03-1989. The fact that there was a time gap between the issuance of notice under sub-section(5)of section 10 of the said Act and date on which the possession was taken, in facts of the present case cannot be termed as fatal or nullify the fact of having taken possession of the land.

Reliance was placed by the learned advocate for the petitioner on the decision of the Division Bench in the case of Mavjibhai Parbatbhai Trapasia v. State of Gujarat(Supra). The facts arising in the said case were however, vitally different. It was the case wherein the Division Bench found that even before the notice under section 34 of the said Act was issued to the petitioners, the petitioners had sold several plots to different persons through sale deed duly registered. Such transfer was for consideration and persons who

purchased the plots were therefore, found to be bona fide buyers for consideration without notice. It was observed that names of such persons were entered in the revenue records. It was found that no notice was issued to such persons before the State Government sought to take the possession of the land in question. It was in this background that Division Bench found that legal formalities were not followed. It was observed that the possession was taken in undue haste. It was therefore, held that possession cannot be said to have been legally taken at all. None of these factors are present in our case. The ratio applied in case of Mavjibhai Parbatbhai Trapasia v. State of Gujarat(Supra) therefore, cannot be applied.

10.2 The fact that name of the petitioner continued for sometime in the revenue records or that the petitioner paid the municipal tax or electricity charges, also cannot be the conclusive proof that State Government did not take possession of the land in question through a valid process. Under sub-section(5) of section 10 of the said Act, the State Government is required to issue notice of its intention to take possession. Under sub-section(6)of section 10 of the

said Act, State Government is empowered to take possession if not delivered in response to the notice under sub-section(5) of section 10 of the said Act. Required procedure was duly followed before taking possession. Indisputably notice was issued and served on the partner of the firm. Eventually possession taken in presence of panchas by drawing panchnama. Such record of the State Government cannot be discarded without strong reasons. The Hon'ble Supreme Court in case of M/s. Larsen and Turbo Ltd. v. State of Gujarat reported in AIR 1998 SC 1608 made following observations in para.13:

> “13. High Court held that actual physical possession of the land subject matter of the acquisition proceeding was not handed over to the appellant while it was the contention of the appellant as well as the State Government that possession of the land was handed over to L&T Ltd. on July 5, 1989. At the time the possession was taken over a Panchanama was prepare duly witnessed by two farmers of the Village Magdalla and signed by the Circle Officer evidencing handing over of possession and also by M.H. Adhikari an officer of the L & T Ltd. for taking over possession. The possession receipt of the same date duly signed by the Circle Officer and the officer of the L&T Ltd. was given. L & T Ltd. thus took possession of the land in presence of the panchas. Panchanama recites that both the witnesses(Panchas) had been intimated in advance by Mamlatdar, Choryasi and that possession of the concerned land that day taken over in their presence by the Circle Officer and that the land was an open spot and there was no construction or crops grown therein. Possession of the land was taken over along with the trees

> standing thereon. As noted above, possession was thereafter delivered to the representative of the L&T Ltd. at the time itself. In the High Court it was contended that no actual physical possession of the land had been taken. The petitioners filed affidavits of the Panchas who had signed the panchanama. In these affidavits they stated that they were called to the office of the Panchayat and that their signatures were obtained on blank papers and that they had not gone to the site and that neither the landlord was present nor the actual possession was delivered to the acquiring body. Read with these affidavits High Court noticed from the recitation in the panchanama that it was nowhere mentioned that the panchas had gone to the site from the office of the Panchayat. It was not disputed that in the revenue records it was L & T Ltd. who was shown in possession of the land. Affidavits of the panchas filed in the High Court which contained statements contrary to what was recorded in the Panchanama and against the revenue entries are quite meaningless and in our opinion High Court unnecessarily put undue reliance on the same. High Court could not convert itself into a revenue Court and hold that in spite of the Panchanama and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body. High Court in our opinion, has not correctly analysed the two judgments of this Court in Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab, [1996] 4 SCC 212: (1996 AIR SCW 1296) and Balwant Narayan Bhagde v. M.D. Bhagwat,[1976] 1 SCC 700 : (AIR 1975 SC 1767) to come to the conclusion that actual physical possession of the land was not taken over by the State."

I therefore, find that possession of the land in question was taken over by the State Government legally before the introduction of the Repeal Act and that therefore, there is no scope to declare the proceedings under the said Act abated.

11.In the result, the petition fails, is hereby rejected. Rule is discharged with no order as to costs.

At the request of the learned advocate for the petitioner, this order shall stand stayed upto 21st March, 2006.

(Akil Kureshi,J.)

(raghu)